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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,704	07/25/2001	Stig Jansson	CU-2513 RJS	2557
26530 7590 06/18/2007 LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604			EXAMINER WINSTON, RANDALL O	
			ART UNIT	PAPER NUMBER
			1655	
			MAIL DATE	DELIVERY MODE
			06/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/807,704	Applicant(s) JANSSON ET AL.	
	Examiner Randall Winston	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-52 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of receipt and entry of the amendment filed on 03/26/2007.

Applicant's amendment has overcome Examiner's 1122nd, second paragraph, rejection.

Claims 35-52 will be examined on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-52 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jansson et al. (No. Patent application number 1993 3009) in view of Keyes (US 4,713,335) as set forth in the previous office action.

In applicant's response on 03/26/2007, Applicant argues that Jansson does not describe or suggest these aspects of the present invention, but rather teaches a process focusing on low temperatures. Keyes expressly teaches away from the present invention by expressly teaching the partial denaturation of a protein to modify its activity into a different desired activity. Therefore, one skilled in the art would not combine the express teaching of beneficial denaturation of proteins by Keyes with Jansson to prepare the present invention, which is directed in part to avoiding protein denaturation.

Applicant's argument is not found persuasive because claims 35-52 stand rejected under 35 USC 103(a) for the reasons set forth in examiner's non final office action of 09/25/2006. Although applicant argues that the Jansson reference focuses on

low temperatures, Jansson reference focuses on low temperatures because on page 9 lines 2-5 of Jansson, Jansson states that low-temperatures should be used within its process not to denature the protein. Therefore, as examiner explained in the previous office action of 09/25/2006, Jansson teaches the claimed and/or present invention because Jansson teaches (see, e.g. entire document) a process for separating elements from the claimed biological material compound and/or composition (i.e., fish or marine material) to obtain high yields of non-denatured protein (i.e. free of denatured proteins), fats or lipids and intrinsically producing grax and trace elements when performing Jansson's separation step whereas Jansson's claimed process would also intrinsically produce the claimed composition comprising non-denatured protein (i.e. free of denatured proteins) and at least one of the group consisting of fat and lipid when such steps are performed as the steps of freezing and mechanically treating the biological material (i.e. please note mechanically treating by grinding and also the reference states one of ordinary skill in the art would add pretreatment compounds such as solvents and/or enzymes because enzymes protect the lipids against oxidation within the process and the reference also states adding antioxidants wherein the process, see, e.g. page 3 and 4) at the same claimed freezing temperature interval (i.e., freezing at -6 degree Celsius); subsequently heating the biological material to a temperature as not to denature the protein contained within the biological material (i.e. please note on page 9 of Jansson et al's specification, it states that the heating should be done at low temperatures not to denature the protein), and then separating and isolating high yields of lipids, fats or non-denatured protein whereas Jansson's process intrinsically produce

the claimed composition comprising non-denatured protein (i.e. free of denatured proteins) and at least one of the group consisting of fat and lipid. Jansson's process is also done under a condition of a vacuum.

Jansson, however, do not expressly teach claims 49-50 of predetermining the denaturing temperature of the material is determined by visual observation (i.e. claim 49) and/or viscosity measurements (i.e. claim 50).

It would have been obvious to one of ordinary skill in the art at the time the invention was created to modify Jansson et al's process to include the predetermining step of visual observation to determine the denaturing temperature of a material because visual observation would be an intrinsic feature within '009 to aid in monitoring the temperature within the process in order not allow the protein to become denatured. (please note: predetermining the denaturing temperature by visual observation prior to performing the other claimed steps, especially the heating step in order not to denature the protein would be an intrinsic feature within '009 process. On page 9 lines 2-5 of '009, it states that low-temperatures should be used within its process not to denature the proteins. Thus, a predetermining step would be an intrinsic feature within '009 process because '009 discloses monitoring its process's temperature by utilizing a low temperature for the purpose of not to denature the protein.)

Furthermore, examiner restates that the Keyes reference is cited in combination with the Jansson reference to remedy the deficiency of Jansson. Jansson does not teach predetermining the denaturing temperature of the material is determined by viscosity measurements. (i.e. claim 50).

Keyes beneficially teaches (see, e.g. column 5 lines 29-35) that viscosity measurements are used to monitor protein denaturation and/or determine the denaturing temperature within a material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Jansson et al.'s process to include the disclosure of viscosity measurements are used to monitor protein denaturation and/or determine the denaturing temperature within a material as taught by Keyes' because the combined teachings would create a method of separating elements from a material wherein the elements separated do not contain denatured proteins. The adjustment of conventional working conditions (e.g the heating step is performed continuously and/or semi-continuously, the isolation step and the freezing rate and/or time period), is deemed merely a matter of judicial selection and routine optimization which is well within the purview of the skilled artisan. Moreover, as the references indicate the various different steps used by the claimed method is result variable, therefore, they could be routinely optimized by one of ordinary skill in the art of practicing the invention disclosed by the references. (e.g. the ordered pretreatment steps, the order of the predetermining step, especially before heating and the ordered mechanically treating steps occurs before said freezing step) (Please note the selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results. (see, e.g., *Ex parte Rubin*, 128 USPQ 440, 1959, and *In re Burhans*, 154 F.2d 690, 69 USPQ 330-CCPA 1946) MPEP 2144.04)

Accordingly, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

No claims are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CHRISTOPHER R. TATE
PRIMARY EXAMINER